19 43

Department of Revenue RS

OFFICE Board of Revenue

STATION Madras

B P Ms No. 724

Dated 5.7.43

7293/43

6 JUL 1943

Pages in the file

(SUBJECT.)

Escheats - (S Kanara) - Mangalore Sub - [redacted] 39 - Second appeal - Filing - Not necessary [redacted] impedned

G.F. 71.

Back Papers.

Dis.	No.	Department. Series.	Date.	Dis.	No.	Department. Series.	Date.
		B.O. Mss 3145 2.11.1939 B.O. Mss 325 1.2.40		B.O. 790 Mss F.4.26 3672 Mss 3.12.29 369 Mss 23.3.32 37(3) Mss 27.1.43			

Further Papers

Dis.	No.	Department. Series.	Date.	Dis.	No.	Department. Series.	Date.
		B.O. Mss 753/45				B.O. Mss 31 6.1.45	

Letter from the Government Pleader, Mangalore.
To the Collector of South Kanara.
Ref.No. A.275-43 dated 19-6-43.

Suits -A.S.No. 699/39 on the file of the Sub Court, S.Kanara.

Your Ref.A3-2913-43 dated 3-6-43.

The learned Sub Judge has modified the decree by enhancing the compensation for improvements to by Rs.492/-

2. The items of improvements in respect of which the compensation is claimed are:

1. House. 2. Making fields. 3. Trees.

In respect of the house a sum of Rs. 150/- had been awarded by the Dt.Munsif. It is increased to Rs. 478/- by the Subordinate Judge. The house existing on the property had been valued by a Commissioner appointed for the purpose after deducting depreciation at Rs. 508/-. There was a suit filed by the present 1st defendant against P.W.1 for possession of this property in which the value of the house had been estimated by the 1st defendant at Rs.300/-.That was in 1924. It cannot be said that the house has increased in value since then. On the other hand if at all, it must have gone down in value owing to depreciation. The learned Dt. Munsif relied upon this important piece of evidence which is also an admission binding on the 1st defendant to fix the value of the house at Rs.300/-.But the learned Subordinate Judge has disagreed with this view on the ground that after all it is only an estimate for purpose of court fee. I do not think that this argument is correct as every party coming to court is expected to say the truth and there is nothing to show that in 1924 the 1st defendant estimated the value at less than what it actually was for the purpose of defrauding the Government of the court fee legitimately due. Besides this important piece of evidence P.W.1 who was in actual occupation of this property and house till 1924 and who is expected to know in detail the value thereof, there is also the evidence of other witnesses regarding the value of the house.

3. Under the circumstances the learned Subordinate Judge ought to have fixed the value at Rs. 300/-

4. It is clear from usufructuary mortgage deed itself that there was a house, cowshed etc. in the property in 1876. It is not in existence now. The present house is claimed to have been built by the 1st defendant and naturally the presumption is and also the evidence is that the old house existing was pulled down. The 1st defendant wants to make out that what was in existence was only a small hut which may be valued at Rs.5/-. There is absolutely no other evidence on the point in support of 1st defendant's version. The evidence adduced on behalf of the plaintiff clearly shows that the house was worth Rs. 150/-. The Subordinate Judge has rejected this evidence and has arbitrarily fixed the value of Rs.30/- giving deduction for the same from out of the value of the present house. I should think that the plaintiffs evidence especially in view of the fact that exhibit A itself makes mention of house and cowshed ought to have been accepted. But any way this is more a question of fact and I do not know whether this could be made a point in the 2nd appeal.

5. The 2nd item of improvements for which the compensation of Rs. 179/- has been awarded by the Subordinate Judge is the making of the fields. The Commissioner's estimate is that an acre of land is equivalent to 2 pothipads of seed area. The entire case for the 1st defendant depends upon as to what the extent of a pothipad of land in terms of acreage is. According to document exhibit A the plot now shown as resurvey No.25-2 which at present is 3 acres 34 cents consisted of only 3½ pothipads of fields and ½ pothipads of barren land to be reclaimed. At present there is an area of 3 acres

34 cents of fields and if the Commissioner's calculation is correct this equals 6½ pothipads of land. Except the Commissioner's statement in the report based on enquiry (the nature of which we do not know) there is nothing to show that 2 pothipads equals 1 acre. Exhibit A itself ---- supplies some basis for arriving at the extent of a pothipad. In Exhibit A one piece of land, the length and breadth of which is given in kolus and the extent of which is given in pothipads clearly shows that one acre equals about 1½ pothipads. This also tallys with the recital regarding the property which now is re-survey No. 25-2, i.e., 4 pothipads in an area of 3 acres 34 cents. The Subordinate Judge ought to have accepted this basis for arriving at the extent of pothipads and ought to have awarded -- compensation only for ½ pothipad. The actual evidence regarding the construction of the field is practically nil. The main ground on which the Subordinate Judge has believed the 1st defendant's version is by relying upon the equivalent area of pothipad in terms of acre as stated above.

6. Lastly, regarding the trees, the Subordinate Judge has given for value thereof a sum of Rs.7/- which had been disallowed by the District Munsif. Where the trees do not require any human aid and have grown wild, the value of the same ought not have been given. The Subordinate Judge seems to forget that the land belongs to plaintiff and the trees growing therein cannot be deemed to be an improvement for which the defendant is responsible and for which he is entitled to a compensation.

7. In my opinion it is a fit case for filing a second appeal. But the difficulty seems to be that all the points are all questions of fact. Second appeals lie only on questions of law. Any way, if you consider fit papers may be sent to the Government Pleader at Madras and his opinion asked for.

8. The certified copies of the two decrees and 12 copies of printed judgments are sent herewith which may be kindly acknowledged. Other papers received from your office are also sent herewith.

9. The appeal time expires on or about 12-8-1943.

10. I request my fee of Rs.30/- may kindly be sent.

(Sd.) M.K. Nambyar,
Government Pleader.

Encl: 1. Certified copies of the 2 decrees, and 12 copies of judgment.

2. Certified copies of the Commission warrant, the commissioner's report, etc., in O.S.No.640/1937 of Kas. Munsif's Court.
3. Certified copies of depositions of 6 witnesses.
4. A loose file numbering pages from 1 to 20.
5. South Kanara District Gazette dated 20-1-1936.
6. A file R.Dis. No. 3787-36 numbering pages from 1 to 424.

Rec'd 16.6.43.

KNR/25.6.

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IN THE COURT OF THE DISTRICT MUNSIF OF KASARAGOD.

Thursday, the 27th day of July 1939.

Present:- Sri E. Krishnamurthi, M.A.,B.L.

Original Suit No.640 of 1937.

Between:

The Province of Madras, represented by the Collector of South Kanara.) Plaintiff.

And

1. Devappa Shanbhaga.) sons of Narasimha
2. Mukunda Shanbhaga.) Shanbhaga.
3. Seshagiri Kamath (dead).
4. Mahalingayya Mariyayya, son of Basannayya and is the Sagu of Jangamar Mutt, Kasaragod.
5. Appayya Heggade, son of Devamma of Hosdrug.
6. The Hosdrug Co-operative Society, is a registered society having its head office at Hosdrug.

Supplemental:-

7. Damodara Kamath, son of deceased Sheshagiri Kamath, care of P.Vittal Narasimha Pai and Harekal Vaman Pai, residing in Mangalore Town.
8. Kamalaksha Kamath, son of deceased Seshagiri Kamath, residing in Hosdrug Village.
9. Panduranga Kamath, son of deceased Seshagiri Kamath, residing in Hosdrug Village.
10. Annappa Kamath, son of the aforesaid Seshagiri Kamath, Clerk, Cannanore Indra Bank, Ltd., care of Sri S.Madhava Pai, residing in -- Cannanore Town.

) Defendants.

Defendants 1, 2 and 5 reside at Hosdrug, the 4th defendant at Kasaragod Kasba, and the 6th defendant has its Head Office at Hosdrug.

This is a suit by plaintiff for redemption of a mortgage dated 6-10-1876 for Rs.600-0-0 after fixing the amount payable under the

P.T.O.

mortgage and for directing defendants 1 to 3 to deliver possession of the plaint A schedule properties, free from the objections on the part of the other defendants. The original mortgagors Banava and Rama died issueless and without leaving any heirs, that consequently the property has become escheat to Government, that the term stipulated in the mortgage expired on 6-10-1936, that defendants 1 to 3 have now come into possession of the various items of the plaint properties on the strength of assignments of the mortgage right aforesaid, that items 5 to 7 were held by the original mortgagors as mulgeni tenants under the predecessor-in-title of 4th defendant, and that defendants 5 and 6 are subsequent chargeholders over the plaint properties.

Cause of action arose on 6-10-1936 at Hosdrug.

KNR/25.6. (Contd.)

Valuation of the claim is Rs.600.0.0.

PRELIMINARY DECREE:-

This suit coming on for final hearing on Tuesday, the 25th day of July 1939, in the presence of Mr. K. Rama Varma Raja, Pleader for plaintiff, of Messrs. K.P. Anantha Rao and K.P. Keshava Rao, Advocate and Pleader respectively, for defendants 1 and 2, and of Mr. C.V. Kamath, Advocate for defendants 5 and 7 to 10, the 3rd defendant having died during the pendency of suit, defendants 4 and 6 being ex parte, and the suit having stood over for consideration till this day:

It is hereby declared that the amount due to defendants 1,2, 5 and 7 to 10, on the mortgage mentioned in the plaint and for improvements in the suit properties, is the sum of Rs.1098.13.0.

And it is hereby ordered and decreed as follows:-

(i) that the plaintiff do pay into Court on or before the 27th day of October 1939, or any later date up to which time for payment may be extended by the Court the said sum of Rs.1098.13.0.

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendants 1,2,5 and 7 to 10 shall bring into Court all documents in their possession or --- power relating to the mortgaged properties in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such persons as he appoints and the defendants 1,2,5 and 7 to 10 shall if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the -------- defendants 1,2,5 and 7 to 10 or any persons claiming under them or any person under whom they claim, and free from all liability whatsoever arising from the mortgage or this suit, and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is further ordered and decreed that, in default of payment as aforesaid, the defendants 1,2,5 and 7 to 10 may apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required deliver up to the defendants 1,2,5 and 7 to 10 quiet and peaceable possession of the said property, and that the parties may be at liberty to apply to the Court from time to time as they have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

4. And it is hereby further ordered and decreed that out of the amount deposited by plaintiff defendants 7 to 10 be paid Rs.299.1.0 (i.e., Rs.125.0.0) due on a prior mortgage and Rs.174.1.0 being the compensation for value of improvements).

5. And it is hereby further ordered and decreed that out of the amount payable to the 1st defendant, out of the amount deposited by plaintiff into Court, the 5th defendant be paid, Rs.100/- (being the principal due under the mortgage Exhibit II in his favour) together with interest thereon at 5 per cent per annum from 23.5.1934 to 22.3.1938 and thereafter at 6 per cent per annum up till realization.

6. And it is hereby further ordered and decreed that the parties do bear their own costs.

Memo of costs for

	Plaintiff.	Defendants.	5th Defendant.	Defendants 7 to 10.
	Rs.as.ps.	Rs.as.ps.	Rs.as.ps.	Rs.as.ps.
Stamp on plaint.	67 7 0	0 0 0	0 0 0	0 0 0
Do. on vakalat.	0 0 0	1 0 0	1 0 0	2 0 0
Do. on exhibits	4 8 0	0 0 0	0 0 0	0 0 0
Do. on petitions.	2 4 0	3 0 0	0 0 0	0 12 0
Pleader's fee.	30 0 0	30 0 0	10 0 0	25 0 0
Process fee.	6 8 0	0 0 0	0 0 0	0 0 0
Process writing fee.	1 12 0	0 0 0	0 0 0	0 0 0
Commissioners fee.	0 0 0	25 0 0	0 0 0	15 0 0
Allowance for witnesses.	25 0 0	2 8 0	0 0 0	0 0 0
Other costs.	6 6 0	0 0 0	0 0 0	0 0 0
Costs paid to opposite party.	3 0 0	0 0 0	0 0 0	0 0 0
Total:	146 13 0	61 8 0	11 0 0	42 12 0

Description of properties (as given in plaint Schedule A)

Properties situated in Hosdrug of Hosdrug Registration Sub District of South Kanara Registration District.

Serial No.	R.S.No.	Old S.No.	Kissam.	Extent. A. C.	Assessment. Rs.as.ps.
1	95/1	(81/3 and (81/7	Wet	0 48	1 1 0
2	95/2	81/4	Wet	1 14	3 14 0
3	95/3	81/5	Garden.	0 64	4 5 0
4	25/2	96/1	Wet	3 34	5 10 0
5	201/16 (portion)	156/10B	Garden.	0 32	2 3 0
6	201/18	156/10D	Garden	0 20	1 6 0
7	201/17 (portion)	156/10C) 156/10E)	Garden.	0 38	2 9 0

And all trees, wells buildings and appurtenances standing thereon and relating thereto, together with all water rights, easementary rights etc.

At Rs.6.12.0 per acre being the re-settlement rate.

Given under my hand and the seal of the Court this 27th day of July 1939.

Sd/- E. Krishnamurthi,
District Munsif.

/True Copy/

For Collector.

26.6.43

IN THE COURT OF THE [illegible] STATE OF S. KANARA.

Present:- Sri T. D. Ramaiya Pantulu, B.A., B.L., Subordinate Judge.

Thursday, the 8th day of April 1943.

Appeal Suit No. 6[illegible] of 1938.

(A.S.No. 629 of 1938 on the file of the District Court, S.Kanara)

Between:

1. Devappa Shanbhaga)
2. Mukunda Shanbhaga) Sons of Narasimha Shanbhaga: Appellants (Defs.1 & 2).

Both residing at Kosdrug, Kasargod Taluk.

And

1. The Province of Madras, represented by the Collector of South Kanara. .. ..)
2. Mahalingayya Mariyyayya, son of Basannayya, and is the Shishya of Mariyyayya of Jangamar Matt, -- resides at Kasargod Kasba, Kasargod Taluk.)
3. Damodara Kamath,)
4. Kamalaksha Kamath,) Sons of Sheshagiri Kamath, 3rd respondent, resides at Manga-) Respondents -- (Plaintiff and Defts.6, 7 to 10 and 5).
5. Panduranga Kamath,) -lore Town and is working in)
6. Annappa Kamath,) the firm of P.Vittal Narasim-)
   -na Poi & Sons, Bunder, Man-)
   -galore Town and respondents 4 and 5 reside at)
   Kosdrug Village, Kasargod Taluk, 6th respondent)
   is a clerk in Indira Bank. Ltd., Jannalore, North)
   Malabar.)
7. Appayya Hegde, son of Devamma of Kosdrug, Merchant residing at Kosdrug Village, Kasargod Taluk. ..)

On appeal from the decree of the Court of the Dt.Munsiff, Kasargod dated the 27th day of July 1938, and made in Original Suit No. 640 of 1937

Between:

The Province of Madras, represented by the Collector of South Kanara. ..) Plaintiff.

And

Devappa Shanbhaga and 9 others. .. Defendants.

DECREE: This appeal coming on for hearing on Saturday the 3rd day of April 1943, upon perusing the grounds of appeal, the decree and judgment of the lower court, and the material papers in the case, and upon hearing the arguments of Sri B.Vaikunta Baliga, pleader for the appellants and of the Government Pleader for the 1st respondent, and of Sri A.Ranganatha Rao, Advocate for respondents 3 to 6 and respondents 2 and 7 being absent, and having stood over to this day for consideration. This Court allowing the appeal in part and in modification of the decree of the lower Court, doth hereby order and decree:-

A // (1) that for the figure "Rs 1038-13-0" occurring in the declaratory portion of the decree of the lower Court, be substituted the figure "Rs 1030-13-0".

(2) that the time for redemption provided under the decree of the lower court be, and hereby is, extended upto 8th August 1943.

(3) that each party do bear his own costs in this appeal.

Memo of costs.

	Appellants. Rs As. Ps.	1st Respt. Rs As. Ps.	Rspnd. 3 to 6. Rs As. Ps.
Stamp on appeal memo.	.. 67- 7- 0.	---	- --
Do Vakalat.	.. 1- 0- 0.	---	1- 0- 0.
Do Exhibits.	.. 1-12- 0.	---	----
Pleader's fee.	.. 30- 0- 0.	30- 0- 0	(not certified).
Process fee.	.. 6- 0- 0.	---	0- 0- 0.
-Do- writing fee.	.. 0-13- 6.	---	----
Stamp for petition.	.. 0-12- 0.	---	----
Other costs.	.. 8-13- 0.	---	----
Total.	..116- 9- 6.	30- 0 - 0	1- 0- 0.

[illegible] Asst.

Valuation in Appeal: Rs 600-0-0
-Do- in Suit. Rs 600-0-0

Given under my hand and the Seal of the Court, this the 6th day of April 1943.

Sd/ T.D. Ramaiya,

Subordinate Judge.

/True copy/

For Collector.

26.6.43

(7.W.S)

(Subject as at p1 N.7)

NOTICE (1)—The Post Office damage in the case of Inland also insured.

(2)—The special to insurance which will be found and Telegraph Guide are binding postal article by virtue of rules Office Act, 1898.

L. C. & Sons, Cal.—

From the Collr of S. Kanara Rc A.3.2913-43 of 25.6.43

124. dt. 5.7.43.

The Collr is informed that there are no good grounds for filing a ~~Collr is informed that no~~ second appeal against the decision in A.S 699-39 of the Sub-Court Mangalore. No second appeal need

2/ The Collr is requested to pay the charges the Court the additional amount awarded by the Sub-judge

3/ The expenditure should be met from the budget allotment under "25-S of Admn Rt Admn Misc- A- Collrs and Magistrates - Contingencies Voted - other charges". If sufficient funds are not available at his disposal the Collr should incur the expenditure ~~under the above head~~ and include the amount in his application for additional allotment in November 1943.

5.7.W)

on. 6/7/43 by SF.

To

The Collr of S. Kanara
with ends as per list returned

C.D

list as in para 4 p1 C.7 to be copied & sent. ends flagged D to be sent by registered post.

7/7

~~Appeal line appears on~~
~~about 12.8.43~~

~~[redacted]~~

~~A.P. [redacted] (S. Kanara) - Honnatgod Dt~~
~~Dec. [redacted] Court - A.S. 640-39 - Mangalore Sub Court~~
~~A.S. 699-39 - Second appeal - filing - Orders~~
~~solicited~~

p1 c. 7 (7293/43) From the Collr. S. Kanara Rep. A.3.2913-43 & 25.6.43

To A.S.(7)

For a brief history of the case please see
(7) pp 19 - 22 N.7 of B.P. No 3145 dated 2.11.1939 from Govt (Mandlik
2. The cost of improvements payable to the defendants, awarded by the Dt. Munsiff was (by D.J. dt. 15.2)
p 7 c. 7 Rs 1098-13-0. On appeal the Sub-judge has
pertinent ex A p 9 c. 7 raised this amount to Rs 1590-13-0. Thus the question for consideration is whether the additional amount of Rs 492 over and above
para 3 & 4 c. 7 of (5) the amount of Rs 1098-13-0 already deposited into the Court should be paid to the defendants or a second appeal should lie filed in the High Court against the decree of the Sub-Court Mangalore.

3. In 1939 the ~~estimated~~ value of the properties
para 3 & 4 p 4 l. 7 of (7) is stated and the expenditure by the govt. for taking possession of the properties were shown roughly as follows:-

	Rs - As - pies
Estimated value of the properties	2760 - 0 - 0
Expenditure incurred by the govt.	
Amount paid into the Court	1098-13-0
Expenses on account of Court-clo	146-12-0
~~Pleaders fee allowed by the Court~~	~~30-0-0~~
Total	1245-10-0

2760. 0-0
1245 -10-0
1514-6-0
para. p 1 c. 7

Thus roughly the govt stood to gain only nearly Rs 1514-6-0. From this amount a further sum of Rs 492/- has to be deducted on account of the additional amount of Compensation awarded by the ~~Dt~~ sub judge to the defendants and also

expenses towards the ~~Contempt~~ appeal case in the Sub-Court and pleaders fees. the result is that the ~~petn~~ do not stand much to gain by the ~~result~~ of the proposed ~~for this reason it seems desirable to file a Second appeal in the High Court against the decision of the Sub-Judge Mangalore But for the reason~~ given in para 1 of his letter at p 1 c 2 the Collr thinks that there are no good grounds for filing a second appeal in the High Court: though the local g.p is of the opinion that this is a fit case for filing a second appeal he doubts whether the petn could succeed, as second appeals lie only on questions of law and not on questions of fact and ~~states~~ suggests that the opinion of the g.p Madras may be taken in the matter. On the circumstances reported by the Collr and the doubt expressed by the local g.p it seems not worth while to file a second appeal. In that case the additional amount of Rs 492/- awarded by the ~~Dt~~ Sub judge may have to be ordered to be paid to the defendants. For orders whether this may be done or the opinion of g.p. Madras will be insisted in the matter for filing a second appeal. Rs 492 to be paid to the defendants

para 7 p 1 c 2

a Second Appeal & Writ Petn can be filed,

A

vide para 1 p 1 c 2

B

Rs 492 to be paid to the defendants under 25 s of Admn - Dt Admn misc

No. G. 43 4 C Section will please note whether there are sufficient funds in S. Kanara Dt for paying Rs 492 to the defendants

EW

A Collrs & Magistrates - Contingencies Voted - "Other charges" as Rs 1098-13-0 was previously paid under this head.

para 2 p 1 c 1

Note by 'C' section.

There is an amt. of Rs 267/- only in the Board's reserve under this head. Hence the Collr. may be authorized to incur the necessary expenditure and apply for addl. allotment in Novr. 43.

B/1.7 C3.

HW/1.7.43

(the file in which the forfeiture was declared exclusive and that in which the filing of a suit by Govt. was ordered are not forthcoming, so as to save time, as they have to be got from the M.R.O.; and as they are not quite necessary for the present purpose)

A may be approved and it may be ordered that no second appeal need be filed.

B may be approved and the payment, throughout of Rs. 492, to the appellants (Defts 1 & 2) may be ordered — the Collector being authorised to incur the expenditure Under 25 S.. Gl. Adm^{n} — Dt. Adm^{n}. — Misc — Contingencies.

I agree. We cannot go to the High Court because the questions are of fact, not of law.

RG 2/7

RS 1.7.43.

J. S.

A & B are approved. RS 2/7

M$_1$

(from page 1 n.f)

Joint Secy. 2 JUL 1943

ASSIST... JUL 1943

2 - JUL 1943

A S (a)/

To A.S (2)

Draft called at p 10 c.2

RS 3.7.43 by 3/7.

RS 5.7.43

AS(77)

CIRCULATION CHECK SHEET.

B.P. No. 724 Mcy

Dated 5.7.43

Single Member.
Two Members.
Full Board.

1-A.	A.D.S. & L.R.	A.S. L.R.	A.S. Irrgr.	A.S. Sep. Rev.	J.S.	S.	L.S.	M2.	M1.

(1) Oper file seen by.
(2) Final draft seen by.
(3) Now circulated to.
( ) Initials

* Secretary / Joint Secretary

Record for record

A.S. (L.R.)
A.S. (Irr n.)
A.S. (Sep.Rev.)
A.D.S. & L.R.
1-A.

13.7.43 to 14/7.

** Note.- Entries not required to be scored out.